

1 but may need to offer as rebuttal because the Bureau is  
2 taking four witnesses for oral testimony, not written  
3 direct.

4 I don't anticipate any surprises from any of those  
5 four, but my anticipation has been confounded in other  
6 matters before.

7 That's something I would take up with you at that  
8 time. But there is the other side of the equation that I  
9 ought to take up now. That MMBI may withdraw some of its  
10 exhibits --

11 JUDGE STEINBERG: Fine.

12 MR. RILEY: -- as the Bureau case unfolds.

13 JUDGE STEINBERG: That's fine.

14 MR. RILEY: But because they aren't -- because we  
15 are doing an admissions session before the witness really  
16 would have delivered oral direct testimony, I would like  
17 MMBI exhibits not to be usable by the Bureau in their cross-  
18 examination of witnesses.

19 JUDGE STEINBERG: That's not workable.

20 MR. RILEY: Okay.

21 JUDGE STEINBERG: I don't think that's workable.  
22 If there is something that's in the record a couple of time,  
23 then if it's an MMBI exhibit and a Bureau or Turro exhibit,  
24 then you use the Bureau or the Turro exhibit, or we can  
25 refer to it.

1           MR. RILEY: My main reference would be to Mr.  
2 Weis's direct written testimony, our Exhibit 1. You see Mr.  
3 Weis would never been called by MMBI as a witness if at the  
4 end of the Bureau and Universal case I concluded they had  
5 not met their burden of proof, and so Mr. Weis would never  
6 take the stand, and I elicit through oral direct questioning  
7 what constitutes MMBI Exhibit 1.

8           And it isn't that they can't question him about  
9 the same subjects. The subjects in there are not a  
10 surprise. They are commonplace. It is the handing of him  
11 the exhibit while he's the Bureau's witness on adverse  
12 questioning that I raise now.

13          JUDGE STEINBERG: I don't think that's doable.  
14 Because I am thinking I have questions for Mr. Weis too  
15 directly related to Exhibit 1, and, you know, it's the types  
16 of things if you look at Exhibit 1, read this, and here is  
17 the question. And so --

18          MR. RILEY: Okay, I understand the ruling.

19          JUDGE STEINBERG: Yes, if you can think of a  
20 practical -- I mean, I'm open to suggestions if you can  
21 think of a practical way to do it.

22          MR. RILEY: Well, it is though, I think, the case,  
23 it's practically easy to reduce what would have been  
24 elicited through oral direct examination to written  
25 statements that speeds things up, and it avoids the

1 difficulty that counsel faces in trying to frame nonleading  
2 questions.

3 But to create then a platform for examination that  
4 really precedes when the time would have come in the  
5 progression of an oral case, I think, leads to more  
6 litigation, reduces the practicality, and leaves us in a  
7 situation where Mr. Weis will be cross-examined twice on  
8 Exhibit 1; once by its use during his calling by the Bureau.  
9 Then if Mr. Weis is -- if in fact then Exhibit 1 becomes a  
10 part of the record, I don't withdraw it. I mean, Mr. Weis  
11 is now on the stand as my witness and I say Exhibit 1 is in.  
12 Now he's open for cross, and then it's used again.  
13 But I understand your ruling.

14 Let me go to one other thing. The Bureau has  
15 said, and we looked at the law on this and I think they are  
16 right, that they are entitled -- I think they are right,  
17 although I would debate it, and it's not worth debating --  
18 that they are entitled to question Weis, Turro, Blabey, and  
19 Montana as adverse witnesses. Years ago they would not have  
20 been able to question Montana as an adverse witness, but our  
21 view of the law, as we researched it recently, is that today  
22 they probably could. And so we don't resist that.

23 But there is no showing that they are hostile  
24 witnesses and there is a difference between an adverse and  
25 an hostile witness. And so while as adverse witnesses they

1     could do as Mr. Aronowitz suggests and proceed to take them  
2     on oral direct with leading questions, there is a difference  
3     between that and belligerent or badgering. And I hope when  
4     these witnesses come in the room, unless Mr. Aronowitz can  
5     show that they are hostile witnesses, that his questioning  
6     won't go beyond leading questions.

7             JUDGE STEINBERG: Let me just say that I would  
8     expect everybody to be civil. There is a -- although  
9     recognizing there is a time when it's appropriate not to be  
10    civil, I expect that -- I expect when Luna and Gaghan are up  
11    on the stand, and when Owen, Lynch and Garland are up on the  
12    stand that it might not be 100 percent civil. Given the  
13    nature of what they are going to testify about, that's  
14    entirely appropriate.

15            I don't like anybody asking, at least not on --  
16    unless it's cross-examination, I don't like anybody asking  
17    leading questions. I prefer the answers to be elicited by  
18    the witnesses, but I understand the position that you are  
19    in.

20            I would just say if it's possible to avoid leading  
21    the witness, try to do it because it's much more meaningful  
22    to me and it makes for a better record if the words come out  
23    of the witness's mouth and not counsel's mouth. And I give  
24    more weight to what the witnesses say than to what counsel  
25    says. But then again I understand that you may -- it might

1 be appropriate to do it otherwise when you are doing certain  
2 areas.

3 I don't mind leading questions if it's like  
4 background and, you know, just routine stuff that you need  
5 to get through to get to the real questions. But when you  
6 get to the real nitty-gritty and the heart of the matter, I  
7 would prefer not leading.

8 However, you can lead hostile witnesses and  
9 adverse witnesses, too, I guess.

10 MR. RILEY: Yes, adverse. The Federal Rules now  
11 seem to treat -- I mean, hostility is one thing. You show  
12 that to the judge, and then he lets you proceed to really  
13 hammer the witness.

14 JUDGE STEINBERG: Yes.

15 MR. RILEY: But adverse now seems to be a really  
16 relaxed standard, simply an employee of someone --

17 JUDGE STEINBERG: Right.

18 MR. RILEY: -- even though clearly not hostile to  
19 the question can be treated adverse, and I understand that.

20 JUDGE STEINBERG: Well, I will be very, very  
21 disappointed if certain witnesses weren't hammered. But  
22 it's always nicer to start off nice.

23 MR. ARONOWITZ: Your Honor, I would think that --

24 JUDGE STEINBERG: Not that you're --

25 MR. ARONOWITZ: -- if any counsel got out of hand,

1 we are all here, you are all here, I just don't see it  
2 happen.

3 JUDGE STEINBERG: Oh it's happened.

4 MR. ARONOWITZ: Well, unless it's merited, I don't  
5 see it happening. I would pledge that, you know, to obvious  
6 be, you know, as civil as the circumstances allow.

7 JUDGE STEINBERG: Okay.

8 MR. ARONOWITZ: What else can I say?

9 MR. RILEY: No, I'm not -- I didn't mean to  
10 suggest by my comments that I thought you would not be. I  
11 just wanted to point out that while your letter of notice  
12 said you would take them as adverse witnesses, I think under  
13 the rules there is a distinction between the right to treat  
14 somebody as an adverse and the right to have it presumed in  
15 advance that they are going to be a hostile witness.

16 MR. ARONOWITZ: Absolutely, and we said in advance  
17 adverse, not hostile.

18 MR. RILEY: I know.

19 MR. ARONOWITZ: Adverse.

20 MR. RILEY: Quite so.

21 JUDGE STEINBERG: Okay, anything further?

22 Then we will be in recess until a week from today  
23 at, I think, 10:00, and thank you very much. It was long,  
24 but it was fruitful, I think.

25 Okay, let's go off the record.

1 MR. HELMICK: Your Honor, are you going to rule on  
2 the timing of setting up the other witnesses for Mr. Turro  
3 at the end of next -- at the end of the first week of the  
4 hearing?

5 JUDGE STEINBERG: Yes, I think if you all can work  
6 out a schedule for all the other witnesses, and then give it  
7 to me, that would be great. If you can't, then we will talk  
8 about it just the way we did this morning. You know, we  
9 would do that next Thursday, let's say.

10 MR. ARONOWITZ: As I understand it, Your Honor, we  
11 are going to make a very sincere effort tomorrow after --  
12 with any kind of luck if we're done with Mr. Loginow at an  
13 early hour, we're going to sit down. Time is very short,  
14 and we are all -- well, most of us are hoping that we can  
15 get some stipulations together to cut down on the volume of  
16 traffic that will be coming through here in the next two  
17 weeks. We certainly would like to wrap this up if we can.  
18 If we can, we are going to make a sincere effort to do that  
19 tomorrow.

20 JUDGE STEINBERG: Okay.

21 MR. ARONOWITZ: I think I speak for everybody when  
22 I say that. So hopefully we can come together. One of the  
23 biggest problems, and I mean, we have said this amongst  
24 ourselves, is the timing. I mean, you know, the deposition  
25 tomorrow, Thanksgiving, and then a hearing.

1 JUDGE STEINBERG: Okay.

2 MR. ARONOWITZ: So the time is short, and it will  
3 require an extra effort. If we can do it, we will do it.

4 JUDGE STEINBERG: Okay. Let's go off the record  
5 now. Thank you.

6 (Whereupon, at 4:15 p.m., the hearing was  
7 recessed, to reconvene at 10:00 a.m., Wednesday, December 3,  
8 1997.)

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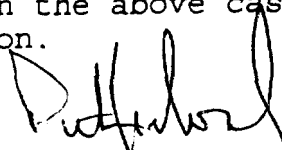
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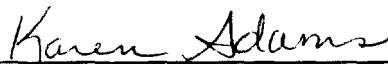
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